IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP.No. 8057 of 1996(H)

PETITIONER:

FOOD CORPORATION OF INDIA, REP.BY THE
DISTRICT MANAGER (STORAGE), COCHIN 29.

BY ADV. SRI.K.P.SREEKUMAR
SRI.MANU JOSEPH
SRI.S.GOPINATHAN

RESPONDENTS:
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1. THE STATE OF KERALA, REP.BY THE
CHIEF SECRETARY TO GOVERNMENT,
TRIVANDRUM.

2. THE LABOUR WELFARE FUND COMMISSIONER,
VELLAYAMBALAM, TRIVANDRUM.

3. THE LABORU WELFARE FUND INSPECTOAR,
KERALA LABOUR WELFARE FUND INSPECTOR'S
OFFICE, KOLLAM 1.

BY ADV. SRI.K.K.BABU R2 & R3
GOVERNMENT PLEADER R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.13536 OF 1996 IN O.P.NO.8057/1996

DISMISSED

9/8/2007 T.RAMACHANDRAN NAIR,JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 LETTER FROM THE FIRST RESPONDENT TO THE PETITIONER,2/4/1993.

EXT.P2 REPN. MADE BY THE PETITIONER TO THE GOVERNMENT,15.9.1993.

EXT.P3 LETTER FROM THE GOVERNMENT TO THE PETITIONER,6.6.1995.

EXT.P4 REPRESENTATION MADE BY THE PETR.TO THE GOVT.,28.8.1995.

EXT.P5 LETTER FROM THE GOVT. TO THE PETR., 24.11.1995.

EXT.P6 REPORT PREPARED BY THE THIRD RESPONDENT UNDER THE KERALA LABOUR WELFARE FUND ACT &RULES.

EXT.P7 INSPECTION ORDER ISSUED BY THE THIRD RESPONDENT.

EXT.P8 SHOW CAUSE NOTICE ISSUED TO THE PETITIONER BY THE THIRD RESPONDENT, 30.4.1996.

EXT.P9 COPY OF THE LETTER SENT TO THE THIRD RESPONDENT BY THE PETITIONER, DTD.10.5.1996.

EXT.P10 TRUE COPY OF THE ORDER DTD.24.10.1997.

EXT.P11 TRUE COPY OF THE LETTER DTD.21.8.1995.

RESPONDENT'S EXHIBITS:

EXT.R2(1) LETTER NO.E.2237/96 DTD.2.1.2004.

TRUE COPY

P.A.TO JUDGE

T.R.RAMACHANDAN NAIR,J.

O.P.NO.8057 of 1996

Dated this the 9th day of August, 2007

JUDGMENT

This writ petition is filed by the Food Corporation of India challenging the orders Exts.P1, P3, P5, P6, P7 and P8. The further relief sought for is to declare that the provisions of the Kerala Labour Welfare Fund Act are not applicable to the petitioner, and therefore, the petitioner is not liable to make any contribution as demanded by the respondents.

2. The Food Corporation of India is a statutory Corporation established by the Central Government under Section 3 of the Food Corporation Act 1964. The entire capital of the petitioner Corporation is provided by the Central Government and the Chairman as well as the Managing Director and Directors other than the Managing Director of Central Warehousing Corporation are all appointed by the Central Government. The contention raised is that in view of the various features under which the Food Corporation of India has come into existence, it actually belongs to the Central Government and hence is an establishment of the Central Government.

3. The petitioner has sought for exemption from the provisions of the Labour Welfare Fund Act 1975 (Kerala). The word "establishment" is defined under Section 2(f) of the Act. Under the said definition establishments of the Central or State Governments are excluded. The contention of the petitioner, therefore, is that the petitioner Corporation being an establishment created by the Central Government under the Food Corporation Act stands excluded from the definition provided under Section 2(f)(v) of the Labour Welfare Fund Act. Therefore, the further contention is that the employees of the petitioner are not employed in an establishment as defined under the Act and hence the petitioner cannot be made liable to contribute to the welfare fund under Section 15 of the Act.

4. The Government, by Ext.P1, rejected the application for exemption stating that as the Food Corporation of India is only an undertaking, it cannot be exempted from the purview of the Act and what is exempted are only establishments of the Central Government. A similar representation was rejected by Ext.P3 dated 6.6.1995 for the reason that FCI has a separate legal entity and it is not an establishment directly controlled by the Central Government. By Ext.P4, the matter was again pursued by the petitioner, but that was also rejected by Ext.P5 informing that the request for review cannot be

granted.

5. Meanwhile an inspection was conducted by the Labour Welfare Fund Inspector who issued Exts.P6,P7 and P8, demanding payment of contribution.

6. The respondents have filed a counter affidavit, supporting the communications issued by the Government rejecting the exemption sought for. Going by the definition under Section 2f(v) of the Act, the Food Corporation is not an establishment of the Central Government. It is also pointed out that the Food Corporation of India is a Corporation established under the Food Corporation of India Act and the Corporation is being managed by a Board of Directors appointed by the Central Government. It is also a body corporate and the Central Government has got only control over the functions of the Corporation. It is only an establishment under the control of the Central Government and what is exempted is only the establishment of the Central Government. It is, therefore, contended that since the Act is a welfare legislation, the petitioner is liable to contribute to the welfare fund.

7. In support of the contentions, the petitioner has produced Exts.P10 and P11 which are statutory notifications issued by the Government of India under the Food Corporation Act, under Section

6(2) of the Food Corporation of India Act.

8. Therefore, the question to be decided is whether the Food Corporation of India is an establishment of the Central Government for the purpose of Section 2f(v) of the Kerala Labour Welfare Fund Act 1975. The said section is reproduced herein: "Section 2(f) establishment includes; v) an establishment including a society registered under the Societies Registration, Act 1860 (Central Act 21 of 1960) or the Travancore Cochin Literary Scientific and Charitable Societies Registration Act 1955 which carries on any business or trade or work in connection there with or ancillary thereto and which employs or on any working day during the preceding twelve months employed more than 20 persons but does not include an establishment and being a Factory of the Central Government or State Government". More or less, a similar issue was considered by this Court in the decision reported in **Food Corporation of India v Angamali Municipality** (1994(1) KLT 977). The question considered was whether the Food Corporation is a department of the Central Government. After referring to the scheme of the Act and the relevant provisions in paragraph 17, this Court held that the Food Corporation, though a statutory Corporation, is distinct and different from the Union Government, though the Union Government provided the capital for

its working, and though it may be an instrumentality of the State for the purpose of Part III of the Constitution. It was held that the Corporation is not a department of the Central Government. Learned counsel for the petitioner also brought to my notice the decisions of this Court reported in **Life Insurance Corporation** v **Appellate Authority** (1990(2) KLT 418) and also **Food Corporation of India, Aleppey** v **Allepey Municipality and others**(AIR Kerala 1996 241). In 1990(2) KLT 418, it was held that the Life Insurance Corporation is an establishment under the Central Government and does not come within the purview of the Shops and Commercial Establishment Act 1960.

9. The definition under Section 2(f)(v) herein clearly covers a situation where the particular establishment should be an establishment of the Central Government. Therefore,the idea that is carried on is plain and clear. It does not cover other entities like the Food Corporation which cannot be said to be an establishment of the Central Government. The definition of establishment is wider in nature. It includes a Society registered under the Societies Registration Act 1860 or Travancore Cochin Literary Scientific and Charitable Societies Registration Act 1955 which carries on any business or trade or any work in connection therewith or ancillary thereto and which employs,

or on any working day during the preceding 12 months employed, more than 20 persons. Therefore, except the establishments of the Central Government and the State Government being a factory of the Central or State Governments, all other establishments are covered by the said definition. Tested in the light of the principles stated in 1994(1) KLT 977, it cannot be said that the Food corporation is an establishment of the Central Government. It is true that the Corporation is one brought under a particular statute and it is being managed by the Board of Directors appointed by the Central Government. The Corporation owns properties, but at any rate, it is not run by the Central Government as part of the establishment of the Central Government. It is distinct and different from Union Government. The definition also will show that establishments under the State or Central Governments have not been brought into its purview. For this reason also, the contention that the FCI will be an establishment of the Central government cannot be accepted. Therefore, the writ petition fails.

10. The learned counsel for the petitioner also contended, in the light of the decision of the Supreme Court reported in **Mahanagar Telephone Nigam Ltd. v Chairman, Central Board, Direct Taxes and another** (2004(4) LW 269), that since it is a dispute between the

State and the Corporation, it will have to be referred to the High Power Committee established by the Government as directed by the Supreme Court in the above decision.

11. The petitioner has filed I.A.19060/2005 seeking for a direction to refer the matter to the High Power Committee. Government Pleader on getting instructions submitted that as far as the disputes of the nature herein are concerned, the State Government has not formed any High Power Committee to deal with them. In the light of the said submission , the request of the petitioner cannot be acceded to.

12. Even though the writ petition fails, the petitioner will be free to raise any dispute regarding the quantum or similar disputes before the appropriate forum.

The O.P. is therefore dismissed. No costs.

T.R.RAMACHANDRAN NAIR
JUDGE

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T.R.RAMACHANDRAN NAIR,J.

O.P.NO.8057 of 1996

JUDGMENT

9.8.2007